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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,889	10/21/2005	Louis T. Klauder Jr	SHAPES2	9566
7590 Louis T Klauder Jr 527 Park Ave Quarryville, PA 17566		03/04/2009	EXAMINER MCCARRY JR, ROBERT J	
			ART UNIT	PAPER NUMBER 3617
			MAIL DATE 03/04/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,889	<b>Applicant(s)</b> KLAUDER JR, LOUIS T.
	<b>Examiner</b> ROBERT J. MCCARRY JR	<b>Art Unit</b> 3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 December 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____          |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application<br>Paper No(s)/Mail Date _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____   |

## DETAILED ACTION

### *Drawings*

The drawings are objected to because the drawings do not adequately show the various shapes used for the railroad track turnout. It is unclear if the drawings are showing specific rails and switches or if they are an attempt at graphing the various types of elevations and curves.

Figures 1 and 2 are stated as depicting the geometry and super elevation of a Bend. It is unclear as to where in the drawing this relates to the railroad turnout. From the explanation in the brief description of the drawings

Figures 3 and 4 are stated as depicting the geometry and super elevation of a Jog. It is unclear as to where in the drawing this relates to the railroad turnout.

Figure 10 is objected to for including text and what appears to be colored shading for various parts. Parts should be indicated using only numerals listed in the specification and should only be simple black and white figures free of any colored shading or indicators. Applicant states that according to 37 CFR 1.84 that the use of shainingd in views is encouraged if it aids in understanding. In the case of figure 10 the shading key is not discernable in the figure and it does not aid in the understanding of the figure as shading in the key cannot be matched with any of the shading in the figure.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The disclosure is objected to because of the following informalities:

The Brief Description of the Drawings states that in figures 1, 3, 5 and 6 "the curved lines depict track centerline shapes as seen in plan view". It is not clear as to which figure serves as the plan view for this basis. It is also unclear as to which of the various curved lines in the figures serves as the "track centerline".

The Brief Description of the Drawings also states that figures 1, 2 and 3 illustrate a bend and jog shpae "which can be used to define the superelevation" of a crossover or turnout. It should be distinctly shown as to what the invention is being used for and not merely what it is capable of doing.

The Brief Description of the Drawings relating to figures 9 and 12 also contin detailed descriptions of the invention and the figures inclucing part numbers. This

should be included in the Description of the Invention or Preferred Embodiments and not in the Drawing descriptions. Further the descriptions use the same part numbers for different parts. Part numbers should be continuous throughout the drawings and the description of the invention.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites a curved path of a railroad track comprising "a combination of a defined super elevation as a function of distance along a turnout track and an inferred horizontal curvature as a function of distance along the turnout track."

It is unclear to the Examiner as to how the super elevation and the horizontal curvature of the turnout track is a function of the distance of the track. It is further unclear as to how the super elevation and the horizontal curvature are different from one another.

Claim 1 recites that the "curved path has a shape selected from the group of shapes consisting essentially of a K-spiral, a Bend, one half of a Jog and part of a Wiggle." It is unclear to the Examiner as to exactly what these shapes are and how they relate to a railroad track and curve. It is further unclear as to how a K shape and a spiral

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are associated. It is further unclear as to exactly what shape a Jog is in relation to a railroad track as well as "half a jog".

The above citations are merely exemplary and the Applicant is encouraged to review the claims for similar errors.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11, as best understood by the Examiner, are rejected under 35 U.S.C. 102(b) as being anticipated by Watanabe et al (US 3,905,568).

Watanabe et al discloses a high speed turnout device for a switching track. The turnout is comprised of a super elevated section as shown in figure 3 and is further comprised of sections of movable rails and crossovers as shown in figure 5a and in further detail in figure 6a. The moveable rails are mounted on girders and move rails to form connections between main line tracks and branch line tracks. The girders move the rails of the switch points to open or close gaps in the rails to allow vehicles to move from the main line to the branch line and back. The movement of the girders and the rails are perpendicular to the longitudinal direction of the rail. Locking devices are also provided to assure a tight connection between the switch points and to prevent any undesired movement of the switch points either before or during the passage of a vehicle.

***Response to Arguments***

Applicant's arguments filed December 9, 2008 have been fully considered but they are not persuasive. Applicant argues the rejection under 35 USC 112 above and states that the invention is explained in the present application in combination with a prior patent to the Applicant. Applicant states in the arguments that the shapes are defined by mathematical functions and applied to the track transitions. It is unclear as to how the various shapes are applied to the physical track structure after they have been derived from the mathematical functions.

Regarding the rejection under 35 USC 102 above, the Applicant merely argues that the present invention and the prior art have mechanical differences and the Applicant is only claiming uses for the shapes and mechanical differences. The Applicant does not describe how the present invention is different from the prior art.

#### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tokuoka et al (US 6,257,494) discloses a base structure for a railroad turnout.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. MCCARRY JR whose telephone number is (571)272-6683. The examiner can normally be reached on Monday through Friday 7:00am to 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. Joseph Morano/  
Supervisory Patent Examiner, Art Unit 3617

/R. J. McCarry Jr./  
Examiner, Art Unit 3617

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RJM

February 25, 2009